IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

| | | |
|---|---|---|
| GEMINI IP, LLC, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil Action No. 4:07-CV-00521 |
| | § | |
| LANDESK SOFTWARE, INC., | § | |
| | § | |
| Defendants. | § | **JURY DEMAND** |
| | § | |
| | § | |
| | § | |

**INTERNATIONAL BUSINESS MACHINES CORP.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendant International Business Machines Corp. ("IBM") responds to the allegations and averments in Plaintiff Gemini IP, LLC's amended complaint ("Complaint"), and provides its affirmative defenses and counterclaims, as follows:

**PARTIES**

1. Plaintiff Gemini IP, LLC ("Gemini") is a Texas limited liability company with its principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

2. On information and belief, Defendant LANDesk Software, Inc. ("LANDesk") is a Delaware corporation with its corporate headquarters and principal place of business at 698 W. 10000 S, Suite 500, South Jordan, Utah 84095. LANDesk has appointed its agent for service as follows: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

3. On information and belief, Defendant Saba Software, Inc. ("Saba") is a Delaware corporation with its corporate headquarters and principal place of business at 2400 Bridge Parkway, Redwood Shores, California 94065. Saba has appointed its agent for service as follows: CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

4. On information and belief, Defendant Genesys S.A. d/b/a Genesys Conferencing ("Genesys") is a corporation organized under the laws of France with its corporate headquarters and principal place of business at L' Acropole, 954-980 Avenue Jean Mermoz 34000, Montpellier, France. Genesys may be served via the Hague Convention.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

5. On information and belief, Defendant Genesys Conferencing, Inc. ("Genesys- U. S.") is a Delaware corporation with its corporate headquarters and principal place of business at 8020 Towers Crescent Drive, Vienna, Virginia 22182. Genesys-U.S. has appointed its agent for

service as follows: National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

6. On information and belief, Defendant Avaya Inc. ("Avaya") is a Delaware corporation with its corporate headquarters and principal place of business at 211 Mt. Airy Road, Room 1C515, Basking Ridge, NJ 07920. Avaya has appointed its agent for service as follows: Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

7. On information and belief, Defendant Best Buy Co., Inc. ("Best Buy") is a Minnesota corporation with its corporate headquarters and principal place of business at 7601 Penn Ave. South, Richfield, MN 55423. Best Buy has appointed its agent for service as follows: CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, TX 75201-4234.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

8. On information and belief, Defendant Bomgar Corporation ("Bomgar") is a Mississippi corporation with its corporate headquarters and principal place of business at 578 Highland Colony Pkwy., Ste. 300, Ridgeland, MS 39157. Bomgar has appointed its agent for service as follows: Cary M. Paulette, 6213 Chapel Hill Blvd., Suite B, Plano, TX 75093-8476.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

9. On information and belief, Defendant ConnectWise, Inc. ("ConnectWise") is a Florida corporation with its corporate headquarters and principal place of business at 2803 W. Busch Blvd., Ste. 204, Tampa, FL 33618. ConnectWise has appointed its agent for service as follows: Arnold F. Bellini, 2803 W. Busch Blvd., Ste. 204, Tampa, FL 33618-4548.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

10. On information and belief, Defendant Elsinore Technologies Inc. ("Elsinore") is a North Carolina corporation with its corporate headquarters and principal place of business at 4700 Six Forks Road, Raleigh, NC 27609-5244. Elsinore has appointed its agent for service as follows: K. Ray Allen, 4700 Six Forks Road, Raleigh, NC 27609-5244.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

11. On information and belief, Defendant GFI Software Ltd. ("GFI Software") is a Maltese corporation with its corporate headquarters and principal place of business at GFI House, San Andrea Street, San Gwann, 1612, Malta. GFI has appointed its agent for service as follows: GFI House, San Andrea Street, San Gwann, 1612, Malta.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

12. On information and belief, Defendant GFI USA, Inc. ("GFI USA") is a North Carolina corporation with its principal place of business at 15300 Weston Parkway, Suite 104, Cary North Carolina 27513. GFI USA has appointed CT Corporation System, 150 Fayetville St., Box 1011, Raleigh North Carolina 27601 as its agent for service of process.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

13. On information and belief, Defendant GFI Software Development, Ltd. ("GFISDL") is a North Carolina corporation with its principal place of business at 15300 Weston Parkway, Suite 104, Cary North Carolina 27513. GFISDL has appointed CT Corporation System, 150 Fayetville St., Box 1011, Raleigh North Carolina 27601 as its agent for service of process.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

14. On information and belief, Defendant LogMeIn, Inc. ("LogMeIn") is a Delaware corporation with its corporate headquarters and principal place of business at 500 Unicorn Park, Woburn, MA 01801-3377. LogMeIn has appointed its agent for service as follows: Michael Simon, 500 Unicorn Park, Woburn, MA 01801-3377.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

15. On information and belief, Defendant N-able Technologies Incorporated ("N-able") is a Delaware corporation with its corporate headquarters and principal place of business at 99 Rosewood Drive, Suite 140, Danvers, MA 01923. N-able has appointed its agent for service as follows: William Junkermier, 99 Rosewood Drive, Suite 140, Danvers, MA 01923.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

16. On information and belief, Defendant NTRglobal ("NTRglobal") is a Spanish corporation  a place of business at 4455 LBJ Freeway, Suite 1080, Dallas, TX 75244.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

17. On information and belief, Defendant Venti Solutions, LLC ("Venti") is a Colorado corporation with its corporate headquarters and principal place of business at 2015 Kittridge Avenue, Colorado Springs, CA 80919-93889. Venti has appointed its agent for service as follows: S. Brian Stout, 2015 Kittridge Avenue, Colorado Springs, CA 80919-3889.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

18. On information and belief, Defendant Zoho Corporation ("Zoho") is a California corporation with its corporate headquarters and principal place of business at 4900 Hopyard Rd., Suite 310, Pleasanton, CA 94588-7100. Zoho has appointed its agent for service as follows: Vembu Sridhar, 4900 Hopyard Rd., Suite 310, Pleasanton, CA 94588-7100.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

19. On information and belief, Defendant Zenith Infotech Ltd. ("Zenith") is a Pennsylvania corporation with its corporate headquarters and principal place of business at 1 Williamsburg Pl., Warrendale, PA 15086-7540. Zenith has appointed its agent for service as follows: Registered Agent, 1 Williamsburg Pl., Warrendale, PA 15086-7540.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

20. On information and belief, Defendant LivePerson, Inc. ("LivePerson") is a Delaware corporation with its corporate headquarters and principal place of business at 462 Fashion Avenue, Floor 3, New York, NY 10018-7832. LivePerson has appointed its agent for service as follows: Vcorp Services CA, Inc., 5670 Wilshire Blvd., Suite 1530, Los Angeles, CA 90036-5650.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

21. On information and belief, Defendant International Business Machines Corp. ("IBM") is a New York corporation with its corporate headquarters and principal place of business at New Orchard Road, Armonk, NY 10504. IBM has appointed its agent for service as follows: CT Corporation System 350 N. St. Paul Street, Dallas, TX 75201.

**ANSWER:** Admitted.

22. On information and belief, Defendant Samsung Electronics America, Inc. ("Samsung Electronics America") is a New York corporation with its corporate headquarters and principal place of business at 105 Challenger Road, Ridgefield Park, NY 07660. Samsung Electronics America has appointed its agent for service as follows: CT Corporation System, 11 Eighth Avenue, New York, NY 10011.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

23. On information and belief, Defendant Samsung Electronics Co., Ltd. ("Samsung Electronics") is a Korean corporation with its corporate headquarters and principal place of business at 250, 2-ga, Taepyong-ro, Jung-gu, Seoul 100-742, Korea. Samsung Electronics has

appointed its agent for service as follows: 250, 2-ga, Taepyong-ro, Jung-gu, Seoul 100-742, Korea.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

24. On information and belief, Defendant Samsung Telecommunications America, LLC ("Samsung Telecommunications") is a Delaware corporation with its corporate headquarters and principal place of business at 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Samsung Telecommunications has appointed its agent for service as follows: Corporation Service Company 1560 Broadway, Suite 2090, Denver, CA 80202-5180.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

25. On information and belief, Defendant AT&T, Inc. ("AT&T") is a Delaware corporation with its corporate headquarters and principal place of business at 175 E. Houston St., San Antonio, Texas 78205. AT&T has appointed its agent for service as follows: CT Corporation Systems, 350 North St. Paul Street, Dallas, TX 75201.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

26. On information and belief, Defendant Sony Corporation ("Sony") is a Japan corporation with its corporate headquarters and principal place of business at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. Sony has appointed its agent for service as follows: 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

27. On information and belief, Defendant Sony Corporation of America ("Sony America") is a New York corporation with its corporate headquarters and principal place of business at C/O SCA Legal Dept., 550 Madison Ave 27th Floor, New York, NY 10022. Sony America has appointed its agent for service as follows: CSC – Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Ste. 100, Sacramento, CA 95833.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

## JURISDICTION AND VENUE

28. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

**ANSWER:** IBM admits that Gemini purports to bring this action under the patent laws of the United States, 35 U.S.C. § 271, but IBM denies any liability thereunder. IBM does not contest subject matter jurisdiction over this action.

29. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has a regular and established place of business in this district, has transacted business in this district, and has committed, contributed to, and/or induced acts of patent infringement in this district.

**ANSWER:** IBM admits that it has conducted and does conduct business within the State of Texas. IBM contests venue and denies that it has committed, contributed to and/or induced acts of patent infringement within the State of Texas, within the Eastern District of Texas, or elsewhere in the United States. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies these allegations.

30. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district.

**ANSWER:** IBM admits that it has conducted and does conduct business within the State of Texas. IBM denies that it has committed the tort of patent infringement within the State of Texas, within the Eastern District of Texas, or elsewhere in the United States. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies these allegations.

**COUNT I**

**INFRINGEMENT OF U.S. PATENT NO. 6,177,932**

31. Gemini is the owner by assignment of United States Patent No. 6,177,932 and its associated re-examination certificate ("the '932 Patent") entitled "Method and Apparatus for Network Based Customer Service." The '932 Patent originally issued on January 23, 2001 and the re-examination certificate issued on September 14, 2010. A true and correct copy of the '932 Patent as originally filed is attached as Exhibit A and the re-examination certificate is attached as Exhibit B.

**ANSWER:** IBM admits that the ’932 Patent is entitled “Method and Apparatus for Network Based Customer Service,” and that it was issued by the U.S. Patent and Trademark Office on January 23, 2001, a copy of which was attached as Exhibit A to Gemini’s complaint. IBM further admits that a reexamination certificate was issued on September 14, 2010. IBM denies that the ’932 Patent and/or the ’932 reexamination certificate (“the ’932 Patent”) were duly and legally issued. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies these allegations.

32. Messrs. Frank A. Galdes and Mark A. Ericson are listed as the inventors on the '932 Patent.

**ANSWER:** IBM admits that the cover page of the ’932 Patent lists Frank A. Galdes and Mark A. Ericson as inventors.

33. Upon information and belief, Defendant LANDesk has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others, of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Management Suite," “Instant Support Suite,” and “LANDesk Service Desk” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.landesk.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant LANDesk is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

34. Upon information and belief, Defendant Saba has been and now is directly, literally, and/or, upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States

by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “Saba Live,” "Saba Centra," “Saba collaboration Suite,” “Saba Enterprise,” “Saba Learning Suite,” “Saba Performance Suite,” and “Saba Web conferencing” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.saba.com and www.centra.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant Saba is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

35. Upon information and belief, Defendants Genesys and Genesys-U.S. have been and now are directly, literally, and/or, upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Meeting Center," “Genesys Enterprise Service,” and “Genesys Video Conferencing” and other products and services that provide remote access and support for consumers and businesses, which are available online at www.genesys.com that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendants Genesys and Genesys-U.S. are thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

36. Upon information and belief, Defendants Avaya has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "NTRsupport Ultimate" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.avaya.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendants Avaya is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

37. Upon information and belief, Defendant Best Buy has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Geek Squad Virtual Agents" and other products and services that provide remote access and support for consumers and businesses, which, for example, are available online at support.geeksquad.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant Best Buy is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

38. Upon information and belief, Defendant Bomgar has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Bomgar Remote Support Solutions" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.bomgar.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant Bomgar is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

39. Upon information and belief, Defendant ConnectWise has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "ConnectWise Support (uses NTR)" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.connnectwise.com,

that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendant ConnectWise is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

40. Upon information and belief, Defendant Elsinore has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “ScreenConnect” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.screenconnect.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendant Elsinore is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

41. Upon information and belief, Defendants GFI Software, GFI USA, and GFISDL have been and now are directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “GFI Max RemoteManagement” and other products and services that provide remote

access and support for consumers and businesses, which are, for example, available online at www.gfi.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendants GFI Software, GFI USA, and GFISDL are thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

42. Upon information and belief, Defendant LogMeIn has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "LogMeIn Rescue" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at secure.logmeinrescue.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant LogMeIn is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

43. Upon information and belief, Defendant N-able has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer

service, customer support, and/or customer care systems such as "N-central" and "N-supportPro" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.n-able.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant N-able is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

44. Upon information and belief, Defendant NTR Global has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "NTRsupport Ultimate" and other products and services that provide remote access and support for consumers and businesses, which are for example, available online at www.ntrglobal.com that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant NTR Global is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

45. Upon information and belief, Defendant Venti has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States

by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “v-Assist.” “v-Manage” and “v-Reach” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.ventisolutions.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendant Venti is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

46. Upon information and belief, Defendant Zoho has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “Zoho Assist,” “WebNMS,” and “ManageEngine” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.zoho.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendant Zoho is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

47. Upon information and belief, Defendant Zenith has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of

the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Help Desk" and "Remote Control Software" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.zenithinfotech.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant Zenith is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

48. Upon information and belief, Defendant LivePerson has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the '932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as "Service Solutions" and "Live Person Online Support Software for Customer Support" and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at solutions.liveperson.com, that are covered by one or more claims of the '932 Patent to the injury of Gemini. Defendant LivePerson is thus liable for infringement of the '932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

49. Upon information and belief, Defendant IBM has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “Tech Support” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at public.dhe.ibm.com that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendant IBM is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM denies the allegations of paragraph 49.

50. Upon information and belief, Defendants Samsung Electronics America, Samsung Electronics, and Samsung Telecommunications have been and now are directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “Samsung remote support service” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.samsung.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendants Samsung Electronics America, Samsung Electronics, and Samsung Telecommunications is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

51. Upon information and belief, Defendant AT&T has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “ConnecTech,” “Remote Subscription Services,” Remote Diagnostics Service,” “Single Instance Remote Service,” and Remote Advanced Set Up and Service” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at connectech.att.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendants AT&T is thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

52. Upon information and belief, Defendants Sony and Sony America have been and now are directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing, by way of inducing infringement by others, and/or contributing to the infringement by others of the ‘932 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling customer service, customer support, and/or customer care systems such as “Sony Backstage Support (including Live Chat, PC Help Desk, Add Device to Network, Setup Your

Printer, Windows Tutorial, PC Network Setup)” and “Technical Support via chat (uses Logmein Rescue)” and other products and services that provide remote access and support for consumers and businesses, which are, for example, available online at www.sonystyle.com, that are covered by one or more claims of the ‘932 Patent to the injury of Gemini. Defendants Sony and Sony America are thus liable for infringement of the ‘932 Patent pursuant to 35 U.S.C. § 271.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

53. To the extent that facts learned in discovery show that Defendants' infringement is, or has been willful, Plaintiff reserves the right to request such a finding at time of trial.

**ANSWER:** IBM denies each of the allegations of this paragraph as they relate to IBM. IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph as to any other defendant and, therefore, denies these allegations.

54. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, predecessors in interest to the '932 Patent complied with such requirements.

**ANSWER:** IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies these allegations.

55. As a result of these Defendants' infringement of the '932 Patent, Gemini has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

**ANSWER:** IBM denies the allegations of paragraph 55.

56. Unless a permanent injunction is issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '932 Patent, Gemini will be greatly and irreparably harmed. .

**ANSWER:** IBM denies the allegations of paragraph 56.

## RESPONSE TO GEMINI'S PRAYER FOR RELIEF

IBM denies that Gemini is entitled to any of the relief sought in its requests and/or prayer or any relief whatsoever.

Further responding to the Complaint, IBM alleges as follows:

## AFFIRMATIVE DEFENSES

As for its affirmative defenses, IBM alleges as follows:

### FIRST AFFIRMATIVE DEFENSE
### (NON-INFRINGEMENT)

57. IBM does not infringe and has not infringed any claim of the ’932 Patent, either directly or by contributory infringement or by inducing infringement or by violating 35 U.S.C. §271(f), either literally or under the doctrine of equivalents.

### SECOND AFFIRMATIVE DEFENSE
### (INVALIDITY)

58. One or more claims of the ’932 Patent is invalid and void for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including but not limited to sections 102, 103(a), and 112.

### THIRD AFFIRMATIVE DEFENSE
### (PROSECUTION HISTORY ESTOPPEL)

59. By reason of prior art and/or statements and representations made to and by the United States Patent and Trademark Office (“the Patent Office”) during the prosecution of the

application that led to the issuance of the ’932 Patent and the reexamination of the ’932 Patent, Gemini is estopped from asserting that the claims of the ’932 Patent can be construed as covering any activity of IBM, either literally or under the doctrine of equivalents.

**FOURTH AFFIRMATIVE DEFENSE**
**(LIMITATION ON DAMAGES AND FAILURE TO MARK)**

60. Upon information and belief, and to the extent Gemini or predecessors in interest to the ‘932 patent had an obligation to mark, Plaintiff Gemini is barred in whole or in part from recovering damages by operation of 35U.S.C. §§ 286, 287

**FIFTH AFFIRMATIVE DEFENSE**
**(LACK OF WILLFULNESS OR INCREASED DAMAGES)**

61. IBM has not willfully infringed the ’932 Patent and Gemini cannot recover increased damages pursuant to 35 U.S.C. § 284.

**SIXTH AFFIRMATIVE DEFENSE**
**(REISSUED/NEWLY ISSUED CLAIMS)**

62. Gemini’s claims are limited or barred by operation of 35 U.S.C. §§ 252 and 307(b).

**SEVENTH AFFIRMATIVE DEFENSE**
**(LACHES/ESTOPPEL)**

63. Gemini’s claims are limited or barred by the doctrines of laches, estoppel, waiver, and/or acquiescence.

**EIGHTH AFFIRMATIVE DEFENSE**
**(FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED)**

64. Plaintiff Gemini’s complaint fails to state a claim upon which relief can be granted.

**COUNTERCLAIMS**

Defendant and Counterclaim Plaintiff International Business Machines Corp. ("IBM"), for its counterclaims against Plaintiff and Counterclaim Defendant Gemini IP, LLC ("Gemini"), alleges as follows:

65. Defendant and Counterclaim Plaintiff IBM is a New York corporation with its corporate headquarters and principal place of business at New Orchard Road, Armonk, NY 10504.

66. Upon information and belief, Plaintiff and Counterclaim Defendant Gemini is a limited liability company duly organized and existing under the laws of Texas, having its principal place of business in Marshall, Texas.

67. In its Complaint, Plaintiff Gemini avers that it is the owner by assignment of United States Patent No. 6,177,932 (the "'932 Patent"), entitled "Method and Apparatus for Network Based Customer Service," and that it has the right to sue on and seek enforcement of the '932 Patent.

68. Under 28 U.S.C. §1338(a), this Court has subject matter jurisdiction over these counterclaims for declaratory judgment, brought pursuant to the Federal Declaratory judgment Act, 28 U.S.C. §§ 2201 and 2202. Venue for this counterclaim is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

69. Based on Gemini's allegations of infringement and the amended complaint ("Complaint") Gemini filed against IBM, a justiciable actual controversy exists between IBM and the Counterclaim Defendant Gemini concerning the alleged infringement, validity, and enforceability of the '932 Patent.

**FIRST COUNTERCLAIM**

**(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)**

70. IBM realleges and incorporates herein by reference the allegations in paragraphs 65-69 above.

71. IBM has not infringed and is not infringing (either directly, contributorily, or by inducement, or under 35 U.S.C. § 271(f), or either literally or under the doctrine of equivalents) any claim of the ’932 Patent.

72. Because there exists a real and justiciable controversy between the parties regarding infringement of the ’932 Patent, this Court should make declarations that IBM does not infringe the ’932 Patent.

**SECOND COUNTERCLAIM**

**(DECLARATORY JUDGMENT OF INVALIDITY)**

73. IBM realleges and incorporates herein by reference the allegations in paragraphs 65-69 above.

74. One or more claims of the ’932 Patent is invalid and void for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including but not limited to sections 102, 103(a), and 112.

75. Because there exists a real and justiciable controversy between the parties regarding the validity of the ’932 Patent, this Court should make a declaration that the ’932 Patent is invalid.

**EXCEPTIONAL CASE**

76. This case is exceptional under 35 U.S.C. § 285.

**JURY DEMAND**

IBM demands a trial by jury on all issues so triable in this action.

## PRAYER FOR RELIEF

WHEREFORE, IBM seeks the following relief:

a. That one or more claims of the ’932 Patent be declared not infringed and also declared invalid;

b. That Gemini take nothing by its Complaint and that Gemini’s Complaint be dismissed with prejudice;

c. That pursuant to 35 U.S.C. § 285 and/or other applicable laws, Gemini’s conduct in commencing and pursuing this action be found to render this an exceptional case and that IBM be awarded its attorneys’ fees incurred in connection with this action;

d. That IBM be awarded its cost of suit incurred herein; and

e. That IBM be granted such other and additional relief as this Court deems just and proper.

Dated: January 18, 2011

Respectfully submitted,

/s/ Hilda C. Galvan
Hilda C. Galvan
Lead Attorney
hcgalvan@jonesday.com
State Bar No. 00787512
Matthew Hawkins
mhawkins@jonesday.com
State Bar No. 24066779
JONES DAY
2727 North Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

ATTORNEYS FOR DEFENDANT
IBM CORP.

## CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was filed electronically on January 18, 2011, pursuant to Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service.

/s/ Hilda C. Galvan
Hilda C. Galvan

DLI-6335126v1